IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA.

APPEAL UNDER E.S.I. NO. 14 OF 2006

1. The Regional Director,
   Employees State Insurance Corporation,
   Panchadeep Bhavan,
   Panaji-Goa.

2. The Recovery Officer,
   Employees State Insurance Corporation,
   Panchadeep Bhavan,
   Panaji-Goa. .... Appellants

Versus

1. Mr. Agostinho Menezes,
   House No. 1449,
   Behind Durga Petrol Pump,
   Fatorda, Margao-Goa.

2. M/s Menezes D'Souza,
   Enterprises Pvt. Ltd. represented
   by it's Director Mr. Antonio Xavier
   J.C. D'Souza having office at Isidora
   Baptista Road Margao-Goa. .... Respondents

Ms. A.A. Agni with Mr. M. Prabhudessai, Advocate for Appellants.

Mr. G.K. Sardessai with Mr. V.A. Palekar, Advocate for Respondent No.1.
Mr. F.M. Reis, Advocate for Respondent No.2.

CORAM : **P. V. KAKADE, J.**

DATE **: 4th October, 2006**

ORAL ORDER :

Heard learned Counsel for both the parties. Perused the record.

2. The appellant-Corporation has filed this appeal against the judgment and order passed on 18/03/2006 by District Judge, South Goa, Margao, who was also acting as Employees State Insurance Court, allowing the application of the respondent under Section 77 of the Employees State Insurance Act, 1948.

3. The application under Section 77 of the Employees State Insurance Act was filed challenging the impugned order dated 28/07/1998 and 01/09/1998, passed by the Corporation under Section 45-A of the said Act and notice dated 29/07/2002 under Section 45-C of the said Act, submitting that the applicant/respondent no.1 was the director of respondent no.2. However, by virtue of an agreement entered into on 18/09/2001, he sold his shares to the Company in favour of one Mrs. Casilda Pinto D'Souza and resigned as the director of the Company and all the assets and liabilities of the Company were transferred to the incoming director.

4. Further, the case sought to be made out by the applicant that for the purpose of running the establishment and since the commencement of the business, the establishment had never employed more than eighteen employees. The inspector of Corporation visited on 22/09/1995 and issued notice dated 26/10/1995 to the respondent no.2/the Company, on the ground that the establishment was covered with effect from 10/04/1995. The present respondent no.1 also denied the liability under the Act, as at no stage twenty or more employees were employed in the establishment. Hence the application came to be filed.

5. The respondent challenged the application on the ground that the present respondent no.1 had failed to challenge the order under Section 45-A within the time limit given under Section 77 (1A) and hence no challenge was in existence to the order and on such and other grounds, the application was sought to be dismissed.

6. The Employees State Insurance Court proceeded with the matter after recording the evidence and came to the conclusion that the present respondent no.1 had proved that the establishment was not covered under the Employees State Insurance Act, 1948 and consequently the orders

dated 28/07/1998 and 01/09/1998 alongwith notice dated 29/07/2002 were bad in law. It was further held that respondent no.1 was not liable to pay any dues in his personal capacity and as such the application came to be allowed and hence the present appeal.

7. At the outset, it may be noted that there is no substantial question of law involved in this appeal. The question which is sought to be raised, inter alia, as to the effect that whether in absence of any challenge to coverage under the Employees State Insurance Act on the part of the Company, evidence of respondent no.1 who claimed to have sold his shares in the Company could be relied upon to give findings on the coverage or otherwise of the company under the Employees State Insurance Act.

8. Perusal of the judgment of the lower Court appears to have taken into account the factual aspect involved in the dispute when it is held that since evidence on record was sufficient to show that during the relevant time the Company was employing not more than eighteen persons in service and, therefore, the establishment was not covered under the Employees State Insurance Act, 1948. In this regard, it was urged on behalf of the appellant that the directors of the Company were also required to be held as

employees of the Company, if they received any remuneration from the Company. This ground was raised in reply to the application. However, the respondent's communication dated 9/11/1995 categorically stated that the directors of the Company were not getting salary or wages but were entitled for only conveyance allowance, sitting fees for the board of directors meetings and a share of profit and, therefore, they could not be held employees of the Company. It is to be noted that Court below has not taken into account this aspect which was required to be considered as it was raised by the present appellant. However, it must be noted that when the lower Court had recorded the finding to the effect that the present respondent no.1 who was applicant in the lower Court, was not liable in his personal capacity to pay anything, that aspect was not specifically dealt with by the lower Court. However, by all stretch of imagination, it cannot be said to be perversity committed by the lower Court. In fact it was necessary for the appellant to establish through its witness that the two directors were included in the employees, so as to complete the number of twenty. However, the evidence on behalf of the present appellant shows that during the course of inspection, he found only seventeen employees present. Moreover, his evidence is conspicuously silent on the point of the allegations that the directors were sought to be included in the employees

so as to complete the number of twenty employees in the establishment.

9. Be as it may, the fact remains that there is no substantial question of law involved and as such the appeal deserves to be dismissed and stands dismissed with no order as to costs.

P.V. KAKADE, J.

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